

Victor Hernandez K-31659
Pleasant Valley State Prison
P.O. Box 8504
Fac D-3-128-L
Coalinga Ca 93210

FILED

2008 JUN -6 A 5:40

RICHARD W. WIEKING
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICTOR HERNANDEZ

NO. C 08-1154 JF (PR)

PETITIONER

PETITIONER'S RENEWED
MOTION FOR APPOINTMENT OF
COUNSEL.

VS.

JAMES YATES WARDEN

Petitioner a State prisoner filed a motion for appointment of counsel on or about February 27, 2008. Petitioner contended that because he could not read or write at a level at which he could understand the proceedings he requested the appointment of counsel.

Title 18 U.S.C. 3006 A(a)(2)(B) authorizes appointment of counsel to represent a habeas petitioner whenever " the court determines that the interest of justice so requires and such person is financially unable to obtain representation. This court concluded that the interest of justice did not require appointment of counsel because petitioner had clearly articulated his claims so far.

PETITIONER HAD ANOTHER INMATE PREPARE HIS WRIT

Petitioner Hernandez is legally unable to read past a 7th grade education and did not prepare the writ the court viewed in determining petitioner could articulate his own claims before this court.

DECLARATION BY INMATE WHO PREPARED THE WRIT

I, James Ray Roberts, declare that Victor Hernandez came to me and ask me to help him because he did not have funds to hire an attorney.

I filed a inmate request from to Inmate Records to first try to determine what the petitioners true release date was. I read the sentencing transcript and found the court promised the petitioner he would only have to serve twenty percent of his sentence if he remained free of CDCR rules violations.

The records office responded which attached to petitioner's habeas corpus claiming because petitioner could not read a notice put out in 1996 that no good time credits would be honored prior to a State court ruling in People V. Stover petitioner would have to serve his entire term.

I, James Ray Roberts filed each state claim on behalf of the petitioner Victor Hernandez on all the issues before this court. I filed a Motion for an evidentiary hearing because this matter could have been resolved with one simple document that the State courts have refused to supply to the petitioner.

Petitioner has sought a copy of the alleged habeas corpus filed by petitioner which he urges was forged by the District Attorney which the state has used to refuse to grant relief.

I can no longer provide representation for Victor Hernandez and there is no meaningful program to assist inmates who can not read or write with the preparation of legal documents.

An appointed attorney is the only reasonable means for the petitioner to present his cause and unconstitutional treatment to this court.

1 the Federal Court because the State Court has refused to even
2 look at the very document which has been the state's reason for
3 not granting petitioner relief.

4 By this court appointing counsel, such appointment would
5 further Justice in that petitioner who is unable to read or
6 write at a level higher than 7th grade would have his day in
7 court and defend against the unconstitutional conduct of the
8 state's violation of its plea agreement.

9 The State cannot induce a guilty plea conditioned on a
10 reduced prison term and then change that agreement eight years
11 into the agreement and claim the issue is time barred.

12 Under Federal Law a state may not grant conditions in a
13 plea agreement it does not have authority to do.

14 The declarant James Ray Roberts has provided assistance
15 thus far and can no longer do so because he does not have the
16 funds to do so. Petitioner Hernandez does not have the funds to
17 hire counsel and will be without any assistance after this motion
18 is filed.

19 I James Ray Roberts declare under the penalty of perjury
20 that the information I have provided is true and correct and if
21 called to testify my information would be the same.

22 James Ray Roberts C-16601
DECLARANT JAMES RAY ROBERTS

23 MOTION TO THE COURT

24 If this court denies petitioner appointment of counsel the
25 petitioner seeks a Certificate of Appealability on this issue
26 to the 9th Circuit on the grounds of abuse of discretion.

27 Filed this May 23, 2008

Victor Hernandez *K-31659
VICTOR HERNANDEZ

EXHIBIT "A"

CDC 128B (REV 4/74)

INMATE: HERNANDEZ VICTOR

CDC Number: K31659 Housing: DFB3 128L

Has completed the: E10 level TABE Test.

Job Assignment: F/D ABE1

Date of Birth: 10 / 16 / 1956

Verified GED: NO HS: NO

The results of his examination are: Reading Score: 3.8 Math Score: 3.7 Language Score: 2.7

C-FILE
CCI
Education File
Student File
Inmate

C. Maxwell

Institutional Testing Coordinator

Pleasant Valley State Prison
GENERAL CHRONO

TABE Date: 6/30/07

TABE RESULTS

Victor Hernandez
K-31659 # D3-128-1000
P.O. Box 8504
Coalinga, CA 93210



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KEY STATE PRISON